Guidelines for Married Filing Separate Returns

References in this publication are to the California Revenue and Taxation Code (R&TC).

General

For federal income tax purposes, married taxpayers can file either married filing jointly or married filing a separate return.

Generally, it is to your advantage to file married filing jointly, especially if you are domiciled in a community property state such as California.

California requires you to use the same filing status on your California return as you used on your federal return. There are two exceptions to this requirement:

- One spouse was an active duty military member.
- One spouse was a nonresident for the entire year and had no income from California sources during the tax year. For more information get FTB Publication 1031, Guidelines for Determining Resident Status.

  Note: The second exception above does not apply if the spouse with California source income is domiciled in a community property state, unless the income is separate income.

If you filed married filing separately for federal purposes or you meet one of the above exceptions, you may file married filing separately for California.

Filing a Separate Return

If you file married filing a separate return, you must follow community property rules for the division of income and deductions.

You and your spouse must each report half of the community income, plus your separate income on your respective separate returns.

Caution: Your taxable income, as well as your exemptions and deductions, may be different if you file married filing separately instead of married filing jointly on your federal return. Some of these differences may also apply on your California return. See below.

IF YOU FILE MARRIED FILING SEPARATELY INSTEAD OF MARRIED FILING JOINTLY		
	Federal Return	**California Return**
1.	You cannot exclude interest income from **US savings bonds** used for higher education.	Interest income from US savings bonds is not taxed by California.
2.	You may need to include more of your **Social Security and Railroad Retirement benefits** in your taxable income.	Social Security and Railroad Retirement benefits are not taxed by California.
3.	You cannot deduct **student loan interest.**	Same.
4.	Generally, you cannot claim **personal, blind, or senior exemptions or deductions** for your spouse if you file a separate return. However, you may claim an exemption for your spouse on your separate return if your spouse has no gross income for the year and is not the dependent of another taxpayer. In addition, you may claim a higher standard deduction on your separate return if (a) your spouse is age 65 or older or blind, (b) you can claim an exemption for your spouse because he or she has no gross income for the year and (c) your spouse is not the dependent of another taxpayer.	Generally, you cannot claim **personal, blind, or senior exemption credits** for your spouse if you file a separate return. However, you may claim a personal exemption for your spouse on your separate return if your spouse is blind, has no gross income for the year and is not the dependent of another taxpayer.
5.	You and your spouse must either both **itemize** or both take the **standard deduction**. If your spouse takes the standard deduction, you must also take the standard deduction, even if your itemized deductions are greater. If your spouse itemizes, you must also itemize, even if your itemized deductions are less than the standard deduction.	Same.
6.	You can only claim the **child and dependent care expenses credit** on your separate return if either (1) you are legally separated from your spouse or (2) you did not live with your spouse at any time during the last six months of the year, your home was the main home for your qualifying person for more than half the year, and you furnished more than half the cost of maintaining your home during the year.	Same.
7.	You cannot claim the **credit for the elderly or the disabled** unless you lived apart from your spouse all year.	There are no comparable California credits.
8.	You cannot claim the **Hope Scholarship and Lifetime Learning credits**.	There are no comparable California credits.
9.	Your **child tax credit** may be reduced.	There is no comparable California credit.
10.	You can only claim the credit or exclusion for an **adoption** on your separate return if either (1) you are legally separated from your spouse or (2) you did not live with your spouse at any time during the last six months of the year, your home was your eligible child's home for more than half the year, and you paid more than half the cost of keeping up your home for the year. You can claim both the credit and the exclusion as long as you do not claim them for the same expense. To apply the exclusion, do not include qualified adoption assistance payments made by your employer in the amount you report as taxable income.	You can claim the credit for an adoption on your separate return. Or, you can claim the exclusion for an adoption on your separate return if either (1) you are legally separated from your spouse or (2) you did not live with your spouse at any time during the last six months of the year, your home was your eligible child's home for more than half the year, and you paid more than half the cost of keeping up your home for the year. You can claim both the credit and the exclusion as long as you do not claim them for the same expense. To apply the exclusion, do not include qualified adoption assistance payments made by your employer in the amount you report as taxable income.
11.	You are not entitled to claim the **earned income credit**.	There is no comparable California credit.

Community Property

Community property is all property a husband, a wife, or both acquire while domiciled in a community property state. It does not include separate property as defined in this publication under Separate Property. Each spouse owns one-half of all community property. We consider property not specifically identified as separate to be community property.

Community Income

Income generated from community property is community income. Community income also includes compensation for services if the spouse earning the compensation is domiciled in a community property state.

Community income must be split equally between you and your spouse when you file separate returns.

Note: In California, community status ends when marital partners physically separate with no immediate intention of reconciliation. Income earned after community status ends is separate income.

Separate Property

Separate property is:
- Property owned separately by a spouse before marriage.
- Property received separately as gifts or inheritances.
- Property purchased with separate property funds.
- Money earned while domiciled in a separate property state.
- All property declared separate property in a valid agreement (pre- or post-nuptial).

You must maintain the property separately. If you use the property for community purposes, or if you commingle it, it may lose its separate property character, overriding any agreements.

Separate Income

Generally, income from separate property belongs to the spouse who owns the property. If you and your spouse file separate returns, you must each report your separate income on those returns.

Deductions

You will generally divide equally between you and your spouse, expenses incurred to earn or produce community business or investment income.

Expenses incurred to earn or produce separate business or investment income are deductible by the spouse who owns the investment generating the income if that spouse pays the expenses from his or her separate funds.

Expenses not attributable to any specific income, such as medical expenses, are deductible by the spouse who pays them. If you pay these expenses from community funds, you divide them equally between you and your spouse.

Note: If one spouse itemizes deductions, you both must itemize deductions.

Examples of Division of Income for California Residents

Example 1 – In the current year you and your spouse are residents of and domiciled in California. You earn $15,000 in wages. Your spouse earns $30,000. In addition to wages, you inherit stock. The stock is in your name only, and you keep the stock and dividend income separate from community funds. You receive $5,000 in dividends. You decide to file separate returns.

Determination: You and your spouse each have $22,500 in community income: ($15,000 + $30,000 = $45,000 / 2). In addition to your $22,500 in community income, you must include the $5,000 of separate income from dividends, making your total income $27,500.

Example 2 – In the current year you and your spouse are residents of and domiciled in California. For the first six months you earn $30,000. Your spouse does not earn any income. On June 30, you and your spouse physically separate with no intention of reconciliation. During the last six months you earn $30,000, and your spouse earns $10,000. You decide to file separate returns.

Determination: For the first six months of the year your earnings were community income. You and your spouse must each report on your individual returns one-half of the income earned during this period. When you and your spouse physically separated with no intention of reconciliation, your community income status ended. Therefore, from July 1, through December 31, the income you and your spouse earned was separate income on your individual returns.

	You	Your Spouse
Community Jan.-June	$15,000	$15,000
Separate July - Dec.	30,000	10,000
Total	$45,000	$25,000

Exemption Credits

When you file separate returns, you and your spouse must each claim your own personal exemption credit.

When you have more than one dependent supported by community funds, you and your spouse can divide the number of dependents between you in any manner you choose. However, you may not split the credit for any one dependent.

Withholding and Estimated Tax Credit

You must file to claim credit for any estimated tax payments and withholding from various income sources in the same manner as you reported the income. If the income is:
- Community income, one-half of the income and one-half of the withholding or estimated tax paid attributed to that one-half of the income, is reported on each spouse's separate tax return.
- Separate income, the spouse who earned the income and contributed withholding or prepaid estimated tax on it reports this on his or her separate tax return.

Changing your Filing Status

If you file a valid joint return, you cannot change your filing status after the original due date (or after the extended due date if the original return was filed under extension) from married filing jointly to married filing a separate return **unless:**
- You annulled your marriage during the tax year.
- The joint return was not valid because you were not married.
- An executor or administrator disaffirms a joint return by filing a separate return for the decedent within one year after the last day allowed for filing the surviving spouse's return (including extensions).
- For tax years beginning January 1, 2000, one spouse was an active duty military member during the tax year.
- For tax years beginning January 1, 2000, one spouse was a nonresident for the entire year and had no income from California sources during the tax year. (See FTB Pub. 1031)

  Note: The last exception does not apply if the spouse with California source income is domiciled in a community property state, unless the income is separate income.

If you file a separate return, you can amend it to change the filing status to married filing jointly as long as the filing status of the federal return is also married filing jointly unless:
- One spouse has received a notice of proposed assessment for the taxable year and has filed a protest or appeal.
- One spouse has filed a suit in any court for recovery of tax for the taxable year.
- One spouse has entered into a closing agreement under California Revenue and Taxation Code section 19441 for the taxable year.

For Additional Information

Telephone and Internet Assistance

From within the United States, call .... (800) 852-5711

From outside the United States, call (not toll-free) ...... (916) 845-6500

Website at: **www.ftb.ca.gov**

Assistance for persons with disabilities: We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments please call TTY/TDD (800) 822-6268.

Large-print forms and instructions
The 540 booklet is available in large print upon request and is also available on cassette tape.

For federal tax questions, call (800) 829-1040.

Asistencia Telefonica y en el Internet
Dentro de los Estados Unidos, llame al .... (800) 852-5711

Fuera de los Estados Unidos, llame al
(cargos aplican) .... (916) 845-6500

Sitio en el Internet: **www.ftb.ca.gov**

Asistencia para personas discapacitadas: Nosotros estamos en conformidad con el Acta de Americanos Discapacitados. Personas con problemas auditivos pueden llamar al TTY/TDD (800) 822-6268.